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THE

LEGAL OPINION

OF THE

HON. WILLIAM HUNTER,

ON THE

QUESTION

OF THE

TOWN'S INTEREST

IN THE

ANCIENT GRIST MILL.

PRINTED AT THE PATRIOT OFFICE.

1829.

AT a Town-Meeting of the freemen of the town of Providence, legally warned and assembled at the Town-House, on the 8th day of October, A. D. 1828.

Voted and Resolved, That Stephen Tillinghast, Robert Angell and Joseph Sweet be and they hereby are appointed a Committee to investigate and enquire into the Town's right and claim to the ancient Grist-Mill and its privileges on Moshassuck river, at the north end of the town, and to devise the most effectual measures for causing the same to be re-established for the purposes for which they were originally intended.—*Provided*, That, in the opinion of said Committee, such claim and interest in said mill and privileges have not been vacated or extinguished.

And it is further voted, That said Committee be authorized and empowered to consult and employ Counsel, if need be, to aid them in said investigation, and to take the advice of said Counsel in writing; and that said Committee report to the Town-Meeting on the third Wednesday in November next.

A true copy: Witness,

NATHAN W. JACKSON, *Town-Clerk.*

[The above named Committee appointed William Hunter and Richard W. Greene, Esquires.]

NOTE.—If sufficient encouragement should be given, we shall publish the opinion of Richard W. Greene, Esq. on the questions proposed by the Committee; and also the opinion which he gave at request of a number of citizens, before he was employed by the town—and also the opinion of Mr. Searle, at the same request—if the two latter can be procured.

QUESTIONS TO BE PROPOSED TO COUNSEL.

1st. Had the town of Providence, in its corporate capacity, any right, title or interest in the land granted to John Smith; and if so, how did said town in its corporate capacity obtain it?

2d. Were the vote or agreement made on the first day of the first month, 1646, and from that time to 1667, made by the town of Providence in its corporate capacity, or by the proprietors of the grand purchase of Providence? If those votes and agreements were made by the proprietors, and not by the town in its corporate capacity, will they enure to the use and benefit of the town as a corporation? There being no signatures to the copy of the agreement of 1649, and no original thereof found, and it purporting to be made between the inhabitants on one part, and the widow and administrator of John Smith on the other part.

3d. Is said agreement binding on the inhabitants, or on the widow and administrator of John Smith; and if so, is the contract of the widow and administrator binding on his heirs at law, or on John Smith, Jr. if he was heir at law?

4th. From the whole tenor of the above agreement, is it to be considered as one with the town in its corporate capacity, or with the proprietors of the grand purchase of Providence?

5th. If any obstructions of the river have been made by the town, or by the proprietors, or any persons holding under them, by erecting mill-dams or otherwise, to the molestation of the mill in its constant course, will that obstruction vacate any interest which the town or proprietors had before?

6th. If any remedy is to be had under said agreement, is it against the heirs of John Smith the elder, or against the heirs of Alice Smith and John Smith the younger, who are the supposed parties to the agreement?

7th. Is or is not the order passed on the 10th of 3d month, 1649, to be considered as evidence that the foregoing agreement was never executed?

8th. Are or are not the proceedings of 27th May, 1667, such as to vest the unconditional fee simple of the lands in John Smith; and, if affirmatively, would an action of damages lay at any time after those proceedings, and before the canal proceedings, against John Smith or his heirs for a neglect in keeping

up the mill, and in whose favor—whether of the town in its corporate capacity, the proprietors of the grand purchase, or in favor of the individual who has sustained damages by not having his corn ground?

9th. If the town had a right of action before the making of the Canal, has it been lost by establishing said Canal?

10th. If the town in its corporate capacity, or the proprietors of the grand purchase, have a right of action against the heirs of John Smith, is it an action of trespass and ejectment for the lands granted, or an action for damages?

11th. Was there any specific location of the mill?

For the Committee,

STEPHEN TILLINGHAST, Chairman.

Providence, July 6th, 1829.

The following is the Opinion of Mr. Hunter, upon the questions proposed to him by the Committee.

OPINION, &c.

The questions in the annexed paper have been presented to me for my opinion, by the Committee of the town of Providence, on the subject of the Grist-Mill, and the following are my conclusions in regard to the Town's interest and concerns in that matter, viz.:

1. The *present* town of Providence, in its corporate capacity, has no entire or exclusive right or title in the land granted to John Smith. It was owned and granted by the great body of the land proprietors of Providence Plantations. The law of the State passed in 1682, recognises and confirms the distinction between this body and a town. The *first* retained their powers as to *ungranted* lands, or as to interests issuing out of those that were granted. The last acquired the powers of a legal corporation, in relation to municipal or police concerns—that is, the right of managing its own prudential affairs. Undoubtedly a town can acquire a title from the body of proprietors by *express grant*, or gain one against it by *prescription* or *limitation*. In the case submitted, there is no *grant* from the proprietors to the town, nor does the doctrine of limitation or prescription apply, because there has been *no possession* by the town, as such, of the land referred to, much less an *entire*, *exclusive* and *adverse* possession.

2. The vote or grant of the first month, 1646, was a vote of the proprietors at their monthly meeting, warned according to order. There is no vote in 1667 which the question seems to suppose, but merely a memorandum that the aforesaid vote of 1646, was, on the 4th of January, 1667, copied by Shadrach Manton, Town-Clerk. The inference from *this* paper *is*, merely, that the town, twenty-one years after the vote and grant by the *proprietors* to John Smith, thought proper to have in its own books convenient reference to a paper, in which the town had an interest, so far forth as most of its corporators were also proprietors. As the grant was made by the proprietors, the benefit

of its conditions and provisions enured to them; nor can the present town of Providence, in its corporate capacity, sustain any action with a prospect of success in regard to this Grist Mill interest.

The agreement, so called, of 1649, was evidently never executed. It is the mere copy of an invalid, unauthenticated paper. It is the evidence of a judicious but unsuccessful attempt for adjusting, or rather preventing, difficulties. It aimed, perhaps, at too much, and, therefore, upon an examination of it by the party to whom it was proposed, it was *rejected*. The reasons which appear to be cogent, if not conclusive, to show that this paper was never executed, are—1st, that the date is left blank in the *beginning* of the paper, and no where else in any way supplied. The paper is drawn up for that time with uncommon care and precision, and it is altogether improbable that a committee, able to indite such a paper, should have omitted to fill its date on the day of its execution. 2. The paper has no signatures, and, of course, no attestations. To presume it was executed, seems to be violating all principle, contradicting all precedents, and conflicting with probability and common sense. 3. It is difficult to account for the *loss* of the originals, if they ever existed. The town had an interest in preserving its counterpart, and had the regular means of doing so. The Smith family had an interest in preserving theirs. 4. Old papers of this date are still extant, and though there is a faint tradition that some papers were destroyed at Providence, when the houses were burnt in King Philip's war, yet that war was in 1676.—This paper, so far as regards the year, is dated in 1649, and was copied in 1667. If the town's original was destroyed at that time, the copy would probably likewise have been. They must have been deposited in the same place, and met the same fate. But recording was not necessary for the town if it possessed the real executed original. The solution is, that the paper was prepared by the town's committee as the evidence of what they *intended* to do, not what they did, and that the copying was merely an act preservative of remembrance of the faithful doings of the town's agents, but not intended as a record making evidence of title to land, or to any interests issuing out or relating to land. It could have been copied for no other purpose, because the paper, if executed, purported not to be a deed under seal, but only an agreement, to which the parties put their hands. It was merely a personal contract; an action of assumpsit could only be brought upon it. There was no law then, 1649 or 1667, requiring the recording of a deed to give it validity, nor was there a law of the colony then or ever,

or of the State now or ever, requiring the registering of agreements for the purpose of giving them validity, or of imparting to them any other authenticity or facility of proof, in case of the loss of originals by time and accident, than what the common law reasonably but perhaps rigidly exacts.

A Town, judicially speaking, is but a mere party, plaintiff or defendant. It has the privilege of suing; it is subject to the liability of being sued. It cannot, more than any other party, make evidence for itself. How, then, could this paper be admitted in evidence? Those who claim for the town a right to a grist-mill forever, refer to this right as emanating from a *grant coupled* with a condition charging the land—but this paper, though not pretended to be under seal, is the only one that can be alluded to for this purpose. If this be inadmissible, the town, as to this view of the case, would have no proof. If the paper is referred to, it must be produced. In general, in cases relating to land, the written instrument is the permanent and exclusive repository of truth; no inferior evidence can be substituted for such an instrument, or be admitted to contradict, alter, or, in general, to explain it.

The collateral aid that the Committee of 1821 administer to this paper, by the assertion that other papers relative to other concerns, though *informal*, have been considered valid, would be unavailing, because the *assertion* itself could not be listened to in a court of law. If true, it would not be relevant to the *point* in issue, and, therefore, for this and many other obvious reasons, the proof of such an assertion would be *inadmissible*.—But in the present case the paper is not informal, but *null*.—There is no error in its execution—it was never executed at all. In further illustration of this, reference ought to be had to the record of the 10th of the 3d month, 1649. The fair presumption is, that this record, instead of being previous, was subsequent to the show of an agreement, and instead of being the origin of that *supposed* agreement, is evidence of its unpropitious failure. This last paper is dated, viz. on the 10th of 3d month, 1649; the other is in 1649, but no other date, not the month nor day of the month. The assertion of the Committee of 1821, that this paper was previous to the attempted agreement, if not a gratuitous supposition, is one entirely *incapable* of proof. It now stands as an affirmative proposition set up by the town, and as the proof of it cannot even by possibility be made out, it must be determined against that party who sets it up, and who thus subjects himself to the burden of proof. But there is a fair presumption derivable from the face of this paper itself, that this record was subsequent to the pretended agreement; that

that paper was never executed, and that all attempts at negotiation and compromise, on the basis of that agreement, had proved abortive; because, in the quaint idiom of that day, it recites, that on the return of an answer from the Widow Smith, their Committee [already appointed and existing, as appears from this expression,] shall once more assay to make agreement with the said Widow about former or latter motions or propositions about the mill, and to prepare an answer by the next Court.—No such answer appears. The Widow had been already assayed with the *prepared* agreement reduced to writing, but she remained resolute, and betrayed no inclination to former or latter motions: and very properly did *she* remain resolute, for the proposed agreement was one that she, as widow, and John Smith, as administrator, had no legal or equitable power or authority to enter into. The very terms, widow and dower, show that, of the fee of her former husband's land, she had no control, nor could impose on it any charge. The undisputed seizen of that fee by her husband, constituted her sole claim as tenant in dower, and its unincumbered transmission to his heir at law is what, by her act, she could not prevent. And in reference to the administrator, what is he but the representative of personal estate? He does not represent the heir; he has no control over, or concern with, the *real* estate. Of the personal estate of the deceased he is but the trustee and distributor. Of the real estate the heir is absolute owner.

The real point of controversy with the Smiths was the attempt to enforce on them a duty and an obligation altogether different from the primary grant or contract of 1646. John Smith was to have the valley wherein his house stands, in case he *set up* a mill. He was not bound to keep it in repair, and this short grant seems to have been worded with a view to take the grantee out of the ancient common law writ, *de reparatione*, which was expressly intended for *mills*. No covenants in conveyancing, though both frequently occur and are frequently *conjoined*, are more distinct than a covenant to set up or to build an edifice, and a covenant to maintain and uphold that edifice, in permanent and perfect repair. The first certainly does not include or imply the last. The proceedings of the parties do not show such an uninterrupted usage of repairing and maintaining as not only to vary the construction of the plain and unambiguous words of the grant, but likewise to *add* a new, *independent* and *important clause* to it.

It ought, perhaps, here incidentally to be mentioned, that the modern clamor in regard to the smallness of the consideration for the grant, viz. the mere erection of a water-mill, betrays an

inattention to the state of society at the time. Land was plenty and cheap, its average price a few English shillings per acre. Monied capital for outlays was scarce, and *intellectual* capital, the *mechanical* intelligence, that the urgent wants of the first settlers could invoke, hardly to be found. Several of the largest properties in the State are derived from similar grants and contracts in relation to mills. It is admitted that, in the absence of all votes, grants and written contracts, *subsequent* to the *primary vote* and grant, if the usage had been constant, asserted by one party and assented to by the other, (with a knowledge of his rights,) it would afford a presumption that the claim of the town was legitimate and sustainable. It would, perhaps, be protected by the bold but beneficent fiction of law, which, in such a lease, presumes a grant from, and according to, the accustomed enjoyment. But in this case (as it is presented to me,) all the parties refer to *actual* votes, grants and records *subsequent* to the *primary* vote and grant, and the question must exclusively be, what is the true construction of ALL these actual, existing and *produced* votes, grants and records?

It may likewise be admitted that there are cases in which a continued, undisputed usage has influenced even the construction of a grant, but these cases are few and peculiar, of doubtful and, as it seems, of overruled authority, and this both in courts of law and equity. [See 3 Ves. 298; 6 Ves. 237; 2 N. R. 449; 7 East. 237; 1 Bligh, 289; Starkie, 1033, 1700.]—Such evidence can never be permitted but in the construction of a doubtful grant or contract, and this permission is principally founded upon considerations of legal policy and convenience, for the purpose of quieting litigations, and supporting long, continued and established usages. [See 3 J. R. 283; 6 Term Rep. 268; 4 J. R. 810; 2 Evans Posth. 219.]

But, as before stated, there is no doubt or ambiguity in the *primary* grant; the words need not the aid of an usage for their interpretation.

But the usage itself, by all the papers and proceedings, is not admitted by the Smiths. It would be left to be ascertained as a fact by a Jury. [See Starkie, 1030.] Before the paper of the 10th of the 3d month, 1649, already referred to, it appears that on the 28th of August, 1650, a committee of two was appointed to agree with two other men that the Widow and John Smith might choose, touching the highway in the valley, and *other articles of agreement about the land and will.*

In November, 1651, John Smith, the miller, had granted to him a six acre lot, "upon the mill's account." Probably he had repaired or *augmented* the mill, and was *thus* paid. What

other account could there be in regard to the mill? And if he was *thus paid* by the town for repairing, augmenting or sustaining the mill, what question, at least up to this time, remains?—But in 1677, so far as depends on vote, grant and record, there was a settlement of the *whole* matter; for *then*, in terms of uncommon precision for those times, and of most comprehensive import, all the lands laid out to the Smith's, including *specifically* "the ten acres more or less at or about the place where the mill stood." The six acre lot above referred to, and various other lands, were "declared, owned and acknowledged by the men of Providence, and purchasers of the said town of Providence, to be the true and lawful right of John Smith and his heirs forever, with all the *appurtenances* and *commodities* thereto—*to have and to hold* without *let, hindrance* or *molestation.*" This vote and grant vested an unconditional fee simple in John Smith and his heirs, and being subsequent to the primary grants, and evidently intended both *as* an *enlargement* and confirmation of them, *released* and *disburdened* all the lands from any charge or condition, *if* any ever had been previously thereto *imposed.*

There is no paper or proceeding in regard to this matter of the mill, from 27th of May, 1667, until the 20th September, 1764, a silence of nearly one hundred years. During that period no action for damages could lie against John Smith or his heirs, in relation to the mill. He possessed his lands in ample and absolute fee, no more burdened by the condition of maintaining a mill than of maintaining a pack of hounds; a condition no more affecting *his* lands, than those of any other tenant in fee simple in the county or colony. Did or could the proceeding of the 20th of September, 1764, alter this state of things? In the course of that century the town of Providence, which, at the time of the original grants, and at the time of the enlargement and confirmation of them in 1667, consisted of the men of Providence and purchasers of the town of Providence. And the outlaying lands, that is, of what is now the whole *county* of Providence, was reduced, by the incorporation of other towns out of *its* territory, to its present limits and jurisdiction.

It might present a new and subtle question, how far the engagement of Mr. Elisha Brown, in 1764, with a part of the original grantors, and that but a *small* part, operated by way of admission of right to that small part, so as to enable the *whole* to assert any new right, or support any action; for clearly, by the plainest principles of the common law, *all* interested in an entire interest, and it was an entire interest, must be

plaintiffs. To settle this point satisfactorily, if it could ever be so settled, would require a nice disquisition, with very faint evidence in regard to the rights of proprietors, as such, and towns, as legally and successively incorporated; a question which is obscured by the lapse of time, and is embarrassed by the irregularity of proceedings of both bodies.

The elevation of towns, as such, into municipal and political consequence, has led them imperceptibly, and rather for mutual convenience than from any design of usurpation, to entrench on the separate rights and interests of the proprietors.

The towns have gradually drawn the management of the proprietors' affairs to themselves. Their rights, interests and functions are actually, though not correctly, conjoined and consolidated. That body of proprietors, once consisting of the men of the ancient, entire town of Providence, have sunk into inevitable depression, and are almost unknown but to the lawyer and antiquarian; but they are a legally existing body, recognized by the laws of the land, as to their name, rights, interests and functions. If, in any suit instituted by a town, it should, by proper pleading and proof, be made evident that the rights and interests claimed by the town were in truth outstanding in the body of proprietors, such suit must fail. There would not be proper parties, plaintiffs. The rightful claim would exist in another body. The nominal plaintiff will have no title. Important cases have, within the last forty years, turned on this single point.

But waiving this matter, what did Mr. Elisha Brown, in 1664, engage to do? It was to put the mill in good repair, and to do his endeavors to save water for its use, and to repair it as soon as conveniently might be. Why did he so engage? He might have been induced so to do if an heir, or legal attorney of an heir, by a direct money consideration, or by a special consideration settling or releasing rights; or he might have done it without any consideration, in plain misconception of his own rights as heir, or of his constituents, or the legal attorney of heirs. He was not an heir himself, and it is unimportant what were his conceptions as to the interests of the rightful heirs, for it does not appear that he was their lawful attorney, or that he could bind them. The assertion in the subsequent part of the vote of 1764, that it was his Grist-Mill, did not make it so. It is admitted that he had but a temporary possession and interest. If as mere tenant, he could not bind his landlord. It was against his duty if he had a life interest or a less interest; he could not bind the heirs of the reversion. This was equally against his duty, and might, in the severity of the common law, have in-

duced an immediate forfeiture of his own present interest, whatever it might have been. Though it may be doubted, under the circumstances of the case, whether he bound himself, it is clear he could bind nobody else, for he represented nobody else.

The paper, then, of 1764, will be totally unavailing to the town of Providence against the heirs of John Smith; would be deemed irrelevant to any imaginable issue that could be tried, and, therefore, *inadmissible*. But after all, it does not appear that anything was effected by this town-meeting triumph over Mr. Elisha Brown, for the next proceeding in regard to the mill is on the 29th of April, 1785. Twenty-one years had passed by. It then appears the mill was worn out of repair, and that a Committee was appointed to enquire on what terms the original grant was made, and *how* the present possessors hold the land where the said mill is erected, and to report the same, together with their opinion what is proper to be done by the town respecting the same; and that in case they should find it incumbent on the *present* owners of said mill to repair the same, that the Committee request them to do it without delay. This *as a modern* paper in the case, is an *important* one. The enquiry turned upon what was incumbent on the owners in 1785. The Committee were to report without delay: they *never reported* at all. The inference is clear, that they did not find it incumbent on the then owners to repair the mill. The town acquiesced in things as they were, and remained contented for sixteen years more, viz. until August, 1801.

This acquiescence, for this protracted period, certainly obscured and rendered doubtful their claim. It showed a shyness of conduct and timidity of assertion incompatible with the clearness and sturdiness of right and claim. The year 1801 is referred to, because, in that year, James Burrill, Jr. Samuel W. Bridgham and Ephraim Bowen, were appointed a Committee for the purpose of *again* inspecting into the state of the mill, and of investigating the tenure by which it was held by the proprietors, which Committee were ordered to report at the next town-meeting. They never reported, nor was any other movement had in this affair, until October, 1821, when a Committee was again appointed, in consequence of a memorial of the heirs of the Smiths.

There was, then, a neglect of the legal assertion of claim from 1785 to 1821, a term of *thirty-six* years. Surely upon all the principles and analogies derived from, and applicable to the statute of limitations, the claim, if it ever existed, must now be barred. The maxim that time does not run against *the*

king, does not apply; for, as before suggested, a town, in a court of law, is but an ordinary party, plaintiff or defendant. It is not the state, it has no sovereignty. It is not the *public*.

The memorial of J. Howell and others the heirs and descendants of J. Smith, though it sought a compromise with the town, and expresses an anxious desire to buy their peace and settle the pretensions of the town as to the Grist-Mill, does not admit but denies the town's right, interest or control.

The preceding remarks are founded on the supposition that the alleged agreement of 1649, on which the town affects to claim, is *no* agreement, because it was never in fact executed. But how stands the case if it were executed? It would be of no force nor effect, because, 1st, as before shown, it did not bind the heirs.* But 2d, if it were executed, and by proper parties, viz by the heirs themselves, or those capable of binding them, the town have since forfeited all right, interest and benefit that might have accrued from that agreement; for, by the 4th clause of that agreement, it is stipulated, on the part of the town, that no corn mill within the limits of said Plantation,† that is, the whole county of Providence, shall be built, &c. &c. A monopoly of the grinding of grain was hereby at the time intended to be conferred on the Smiths. The grantors may have had the power of covenanting this at the time, but they have long since lost their power of performing their covenant. It is notorious, that in *numerous instances* this covenant has been violated. The alleged agreement wants the essence of a contract, *reciprocity;* a capability of mutual performance, an obligation equally binding on both parties, and which could, by either party, be enforced against the other. The charter of 1663; the division of the ancient town of Providence into various other towns, with all the powers of separate and entire jurisdiction; the superintending and uncontrollable power of the Legislature; the *declaration of rights;* in truth, the course of events; the operations of time and nature, have rendered the performance of this covenant, on the part of the town of Providence, as impracticable as it is inexpedient. But if it has not performed and cannot perform *its* part of the contract beneficial to the party with whom it contracted, it is clear it cannot enforce

* John Smith *was* heir at law.

This note was made by order of the Committee, by *Stephen Tillinghast*, Chairman.

†The limits of the then Plantation extended only to *Masshapog* and *Pawtuckyat*, comprising a very small portion of the actual county. [See Roger Williams' letter to Jno. Whipple. July 8, 1669.]

Note made by order of Committee. *Stephen Tillinghast*, Chairman.

against that party the performance of that part of the contract which is peculiarly beneficial to it, the town. That consideration fails. There is, therefore, on *this* ground, by operation of law, a virtual release of the stipulations of this agreement; and I am humbly of opinion, that this doctrine *would* be sustained both by courts of law and equity.

But waiving the further consideration of all these remote questions, not one of which should I have deemed it necessary to have investigated, if the instructions of my clients had not expressly enjoined it as a duty, I proceed now to state, lastly, a *bar* to the claim of the *Town* by their own recent act, which appears to me be peremptory and conclusive. I refer, in the first place, to the proceedings of the town had on the 2d of February, 1826, in relation to the Blackstone Canal. The proprietors of that Canal had then surveyed its proposed route, so far as to cross the site of the Grist-Mill, in which it is asserted the town had an interest, and also to extend that route through other lands claimed by the Town. A committee, consisting of Philip Allen, John Carlile and Benjamin Clifford, were appointed to represent the town before the Commissioners, or before any persons appointed to appraise the damage,—or before a Jury, in case such committee should claim an *appeal*, with authority to contract, in behalf of the town, for such renumeration for injuries or damage which the town may sustain, or in their discretion to release the same, and what was done by said Committee was to be *conclusive and valid.*

Under this authority, legal, ample and precise, the committee attended to the duty of their appointment, and on the 19th of April, 1826, reported verbally, that they *had* done so, but were not then ready to make further report.—On the 10th of June, 1826, the Committee reported, that they had further attended to their duty; that they had claimed damages for the injury the town may receive by the removal or destruction of the Corn Mill, but that it appeared by the record of the Court of Common Pleas, that the Committee appointed by the said Court, do not consider the Town of Providence will sustain any *damage* by the removal or destruction of the Corn-Mill, and award no damage to the town, which report was read, received and recorded.

Now here is a decree of a competent Court, had upon the hearing of the parties; the losing party had a right to an appeal, and to a trial by Jury, if *dissatisfied.* The appeal was not claimed; the right to a trial by Jury was waived. There is no pretence of surprise, mistake, inadvertence or ignorance of the town's rights. Not to appeal, not to claim a trial by Jury, was the deliberate decision of the town's Committee, invested with

ample powers, and conscious of their responsibility as agents and trustees in a delicate concern. They exercised what they deemed a sound discretion on this subject, and the town has solemnly accepted, ratified and recorded their doings. The subject before the Court of Commissioners was the town's interest in the Mill, and the damages that ought to be awarded for its destruction. The property was taken or an interest destroyed ; yet if, in the opinion of the Commissioners sworn to the impartial discharge of their duties, no damages were sustained over and above the benefit and advantages accruing from the opening, building and completing the Canal, no damages could legally, according to the act of incorporation, be awarded. The Court of Commissioners acted with unimpeached good faith. It appears, too, that they decided wisely and equitably, for the party interested, with a right of appeal and resistance, acquiesces in their decision and leaves it undisturbed.

Surely this decision of the Court of Commissioners, and this acquiesence, must be held to be clearly conclusive of this subject. It is, by operation of law, a release and extinguishment of the town's interest in the Mill—the town have obtained for that, the law for public purposes took from it, an *adequate compensation* in the success of a noble and beneficial enterprize, which facilitates and extends its commercial intercourse, and which must, if all former experience is not fallacious, enhance and confirm its prosperity. I am, therefore, decidedly of the opinion, that the town of Providence is not bound, by its duty to any portion of its inhabitants, to enter into what must be a protracted and expensive, at any rate a precarious, and, as I am bound sincerely to say, an unsuccessful litigation.

WILLIAM HUNTER.

Providence, July 20th, 1829.

PROVIDENCE, August 31, 1829.

I certify, that the above and aforegoing 13 pages are a true copy of a paper, now on file in the Town-Clerk's Office, purporting to be an opinion of William Hunter, Esq. as to the Town's right to the ancient Grist-Mill; and also the Questions of the Town's Committee, proposed to said William Hunter, Esq.

NATHAN W. JACKSON, *Town-Clerk.*